

Senate Education and Workforce Development Committee
Tricia Melillo 271-3077

SB 480, relative to participation in school sports programs for female student athletes.

Hearing Date: March 3, 2020

Members of the Committee Present: Senators Kahn, Dietsch, Morgan, Ward and Starr

Members of the Committee Absent : None

Bill Analysis: This bill prohibits public schools from permitting a male student to participate in a student sport designated for females.

Sponsors:

Sen. Giuda

Sen. Ward

Sen. Birdsell

Who supports the bill: Sen. Ruth Ward, Sen. Regina Birdsell, Rep. Mark Pearson, William Himmel, Jenna Pedone, Courtney Pedone, Christy Mitchell, Emily Mitchell, Mathew Simon, Aaron Penkacik, Shannon McGinley, Daryl Erickson-MD, Richard E. Johnson-MD, Bethany Scaer, Lauren LaMarsh, Madeleine Fishman

Who opposes the bill: Rep. Lisa Bunker, Rep. Timothy Horrigan Chris Erchill, Devon Chaffee-ALCUNH, Palana Belken-ACLUNH, Sally Hatch, Susan Covert, Sophia Biondolillo, Loretta Brady-Ph.D., Dennis Jakubowski, Elizabeth Corell, Liz-Anne Platt, Nancy Brennan, Louise Spencer, Ed Friedrich, Louis Friedrich, Jeanne Torpey, Erin McManus, Claudia Damon, Jennifer Smith-MD, Jake Berry- New Futures, Kayla Montgomery – Planned Parenthood, Marcia Garber, Michael Padmore – NH Medical Society, Jennifer Frizzell – NH Women’s Foundation, Doug Marino, Chloe Lacasse, James Costigan, Julian Satchffe, David Moretoni.

Summary of testimony presented in support:

Senator Bob Giuda

- Most towns in his district are rural all of which have students that are affected by this situation.
- In no way is this legislation anti-trans gender.
- This bill accepts and promotes the fact that athletic competitions are physical contests in which strength and agility are determining factors in the outcomes.
- Those outcomes do have potentially life changing consequences for everyone involved, the CIS gendered and trans gendered females.
- We cannot ignore the laws of nature despite our compassion for those who are gender uncertain or going through the transition.
- Their job as legislators is to enact public policy that does no harm.
- The harm that he sees here is to the athlete that is not the superstar on a women’s team that is or will be displaced by a physiological male.
- The harm is done to the CIS gendered person because the trans gendered person can still play sports on the gendered based team.
- It is a dangerous practice to upend social and athletic norms by ignoring in physical contests the physical aptitude of male and female students.
- This bill does not prevent a single trans gendered female from participating in athletic contests.
- Failure to pass this will deny physiological females from participating in contests and reap the rewards, emotional, psychological and potentially financial in terms of scholarships.
- Failure to pass this legislation, down shifts this issue to the schools, which will result in litigation if they are not willing to establish a non-discriminatory policy that differentiates

between male and female physiology, while still allowing all athletes, regardless of gender preference, to participate in sports based on their physical gender and their aptitude therein.

- The heroic men and women who fought for Title Nine recognize the difference between male and female athletes and codified that in federal law.
- Their failure to recognize and respect those who are struggling with gender identity as well as those who are not will not serve the state or the students well.
- They must not allow in law the disenfranchisement of young women by allowing young men in transition to participate in women's sports.
- Passing this bill respects the gender, the rights and the athletic abilities of young women as well as young trans women.
- He believes they must put first the overall benefit of all the students.
- Senator Morgan asked how would this bill be non-discriminate yet have someone dispute a student's sexuality or gender.
- Senator Giuda replied that the discrimination is being done against the CIS gendered athlete. Differentiation of ability is not discrimination.
- Senator Morgan asked who will dispute someone's gender, who will enact this, how would it work.
- Senator Giuda the school district will give physicals and determine.
- Senator Morgan commented that is not what is happening here. He added that the bill is discriminating by identifying specific individuals and telling them they need to be physically examined.
- Senator Giuda stated that all athletes are given physicals and they have physical characteristics whether they are male or female.
- Senator Morgan commented that is not what he asking. He then asked how is the school going to identify specific individuals. It is discriminatory to dispute a fifteen year olds gender identity. He asked about the mechanics in the language of the bill.
- Senator Giuda stated that the mechanics are very evident. Every athlete gets a physical and they are determined to be female or male and if a trans gender athlete identifies as female they are self-identifying. The science is very clear as to the difference of hormone levels between males and females and the capabilities from them.
- Senator Morgan commented that he understands that everyone gets a physical examination his question is who is going to dispute the gender of the athlete and how does that work. The bill states "if disputed" he would like to know who disputes.
- Senator Giuda replied that the dispute would come from another student, the school board, superintendent, teacher or parent and then the non-intrusive test would be administered. He added that we need to trust our school boards, and superintendents to make the decision and he believes it is an appropriate mechanism.
- Senator Kahn asked about the completion of transition.
- Senator Giuda stated that the transition from one gender to another does not happen quickly, and testosterone is the driver of the capability. If a person reaches the level of testosterone that shows they do not have the capability to exceed an ordinary female athlete then they can play on a female team.
- Senator Dietsch commented that on line 15 of the bill it states the "student's naturally occurring level of testosterone" and asked if the student is undergoing treatment how would someone decide what the naturally occurring level was.
- Senator Giuda stated that the physician would know what a naturally occurring level of testosterone is for both male and females.

Representative Mark Pearson

- He is in favor of this bill.
- In 1972 the Education Amendments Act required that women and men be provided equitable opportunities to participate in sports.
- When Dr. Martin Luther King addressed the National Bar Association on August 20, 1959, he stated, "In an effort to achieve freedom in America, we must not try to leap from a position of

disadvantage to one of advantage, thus subverting justice. We must seek democracy and not the substitution of one tyranny for anotherSo I would recommend to you a way of love.”

- When the EAA passed they knew that it would be extremely unlikely that girls and women could be on a level playing field with boys and men on most male teams. The body mass and testosterone levels are not the same.
- There was push back to Title Four and Title Nine of the Education Act and a few schools even shrank the number of male teams to achieve parity with female teams seeking to heap the blame on the girls demanding justice.
- In the past year he has been contacted by girls and women and their parents concerned that the gains of the last fifty years might now be eroded with the participation of trans gendered individuals on their or their daughters teams.
- Some of these women are progressives and active in the Women’s Liberation Movement.
- In trying to address this issue he has been screamed at by people telling him he wants to take away their daughter’s participation in team sports.
- He asked the committee to consider what happens when a trans gendered female joins a girls or women’s team.
- Many who had been average athletes on male teams are winning places on girls teams.
- Some teams have a fixed number of spots, so a biological girl is being displaced.
- He wondered where is the justice for that girl and added that some do not care.
- Some biological females are losing their hard fought team and state records and scholarships, and he asked what about them.
- Some have objected to the physical exams proposed in this bill to establish certain objective not subjective markers stating that these are insulting and invasive.
- He recalls the physical exam he had to take when he was on junior high sports teams and he found them very embarrassing.
- He stated that hormonal injections and genital surgeries are invasive already.
- This bill is not about disadvantaging trans gender individuals in sports any more than the law 48 years ago was about shrinking the number of male participation in sports.
- He is sure that sports organizations can find a way to accommodate trans gender females without destroying the intent of the Education Amendments Act or turning the clock back to the dark ages of women’s sports or denying women justice.
- He suggested that maybe we can, as Dr. King said, “seek democracy and not the substitution of one tyranny for another.”

Courtney Pedone

- She is here to ask the committee to vote yes on this bill.
- She has played sports her entire life and always considered herself an average player.
- She enjoys the social aspect of sports and has jumped around to different sports playing with both biological males and biological females.
- Over and over she has seen the difference in performance between biological males and biological females.
- This bill will help girls like me who are not the elite or star athlete of the team.
- If this bill passes she will be able to continue to earn a spot when she competes against her fellow biological females and not lose it to biological males deciding to compete against her.
- This has not been a huge issue in NH yet, but she fears if the bill does not pass her sisters and herself will be left out of sports because they will have to compete against males who are stronger, faster and more athletic due to their testosterone.
- She asked the committee to please think of the thousands of girls like her who love to play sports and don’t want to be pushed out.

Jenna Pedone

- She is a registered pharmacist and mother of 4 girls who all play sports in NH schools.
- As one of seven siblings, 6 girls and 1 brother, they spent a lot of time playing games outside in the neighborhood with other kids.
- There was always a clear difference between what her and her sisters could do and what her brother could do.
- He was not the oldest, but he was much stronger, faster and aggressive than they were especially once they hit puberty.
- It is important to point out they grew up with the same parents and similar upbringing, however her brother excelled physically for the simple fact that he was male, and they were female.
- As a mother, she has four daughters that range in age from 11 -16 years old.
- They are not the stars of their teams they play for the love of sports.
- Her fear is that in the future girls like hers will not be able to make their teams if they have to compete for spots against biological males.
- She heard the testimony from some of the biological males who would be affected by this legislation and have empathy for their situations as they are all unique.
- In her opinion voting to ITL this bill will be essentially nullifying Title IX for these biological females.
- Senator Dietsch asked how would them deeming it ITL change anything.
- Ms. Pedone replied that there will be girls pushed off of teams and males making rosters.
- Senator Dietsch commented that if they ITL the bill nothing changes from how it is today.
- Ms. Pedone answered that biological males will join the teams leaving no spots for the biological females.
- Senator Kahn asked if she has seen this happen.
- Ms. Pedone replied that she has seen it happen with one of her friends daughters.
- Senator Dietsch asked if they have had boys on a girls team beat the girls.
- Ms. Pedone replied yes they have.

Emily Mitchell

- Supports this bill to preserve fairness in women's sports.
- She is a Division III collegiate Track and Field athlete and has just completed her 14th season of competition.
- When talking with her peers and fellow athletes, the biological difference between males and females seems obvious. That is why there are two teams and she has not competed on the same team as males in over a decade.
- In athletics the difference between males and females is well established.
- In Track and Field, men's hurdle height is higher, they throw a heavier shot in the shot put, a heavier weight in the weight throw and a heavier hammer in the hammer throw.
- In javelin, the men's javelin is both heavier and longer than the women's.
- In men's pole vault and high jump, the opening mark is always higher than women's.
- To qualify for an event the men's standards are always higher than the standards for the women.
- The men run faster, jump higher, throw farther, and they are biologically equipped to do that.
- Her teammates and her do not compare their marks to those of their male counterparts, to do so would not only be silly but upsetting and demoralizing.
- They would not even qualify for these meets under the male standards.
- Instead of competing they would not even be making an appearance.
- If biological males were allowed to qualify and compete in the female category, they would consistently outperform them.
- Sport and competition has greatly shaped her life and it is deeply worrying to her that this opportunity is currently being robbed from many female athletes and those that come after.

Christie Mitchell

- She is here to testify as the mother of three female athletes.
- Her middle daughter is a high school senior and among the best female sprinters in New England.
- Last year, despite being the first finisher in the Connecticut State Championships, she was deprived of the gold medal and state titles she had earned in those races.
- The recognition went to the males in her race that crossed the line first.
- It was April of 2017 when she first learned that Connecticut's high school athletic association was allowing males to compete in girls' sports based on gender identity rather than biological sex.
- She knew that this would undermine girls' sports and wipe away the opportunities that Title IX had created for them.
- She was astounded to hear from the state official that "girls have the right to participate, not to win."
- The results of this policy, which is virtually identical to NH policy, have been devastating for female athletes.
- She has stood alongside the track and watched as two males were awarded girls' state championship titles 15 different times.
- The girls worked hard to be the best at their sport and were deprived of fair competition, the thrill of victory, and the honor of being a champion.
- Losing the state championship four times to a male mattered to her daughter
- More than 100 girls in Connecticut have lost championships or their chance to advance in competition because biological sex categories in sports were abandoned.
- Most of the female sprint records in Connecticut, some that stood for 30 years, have been wiped out.
- The female sprinters in New England have been and will continue to be locked out of the opportunity to win at the highest levels.
- Fair competition and safety for female athletes require sport categories based on sex, not gender identity.
- Please do not let this happen in NH.
- Regarding some of the testimony she heard earlier she wanted to let the committee know that these trans females do not need to be athletically gifted athletes to win a competition against a biological female.
- There is no asterisk next to the trans gender athlete that coaches are looking at and many are not doing the medical transition.
- Senator Kahn asked where she resides.
- Ms. Mitchell stated, Canton, Connecticut.

Summary of testimony presented in opposition:

Representative Lisa Bunker

- Neither gender nor biological sex is a simple binary.
- There is a puzzle here, but this bill is not a proper way to solve it.
- She asked the committee to keep in mind that trans kids are not necessarily athletically gifted. Most of them that she meets in her work as an author are the nerdy, theater kids and have no interest in being on a sports team.
- She did not transition until her 40s but even as a male she was not a threat athletically to either gender.
- There is a small fraction of kids that are trans and of that fraction an even smaller number are gifted enough to pose some competition to the other kids in school.
- Most children that are transitioning in school are receiving medical help that would delay puberty.

- These kids that the bill worries about are not getting the extra male bone growth or hormones.
- A trans girl named Lane testified during another hearing and stated she just wants to play soccer with her friends.
- She is not a threat to the other soccer players and spends a lot of time on the bench.
- Stories like Lane's are much more common than the other brought up today.
- Regarding the question of a talented track star being recruited by schools but would lose her place because of a trans athlete, she believes any recruiter would take note that she was competing next to a trans athlete.
- There would be an asterisk next to the stats of the trans gendered female.
- Passing this bill will be a door slammed in the face of a minority of students that are already vulnerable and misunderstood.
- She could see a lot of harm if the bill passes and less harm if it does not pass.

Devon Chaffee – Executive Director, ACLU NH

- This bill is blatantly discriminatory piece of legislation that will subject students to unnecessary and invasive medical tests.
- It violates the privacy rights not just of trans gendered students but of all students.
- Trans individuals of all ages have been participating in sports, in NH, consistent with their gender identity for years at all levels.
- They have not seen the sort of bogey man that has been presented here today that seems to be driving this bill.
- They have seen no issues occur in New Hampshire athletics.
- Five years ago, the NH Interscholastic Athletic Association codified this long standing practice of allowing trans athletes to participate according to their gender identity.
- That policy has also been modeled by the NH School Board Association.
- If they truly trust the school boards and the experts within the NH School Board Association as well as the Athletic Association, then they would trust in the policies that have been established on this issue.
- The bottom line is that they have seen no issues with these policies as applied and seen no indication from the NH Athletic Association that they need to reexamine the policy.
- As has always been the case many factors go into determining whether or not an athlete is successful.
- She believes this bill is not fixing any real problem and is certainly not about fairness.
- They have seen an overwhelming majority of courts protecting the rights of the trans students and prohibiting the exclusion of trans students from activities that are consistent with their gender identity. Any violation of this is a violation of Title IX.
- This bill also flies in the face of legislation passed by this legislature and signed by the Governor only two years ago because it targets and excludes certain students from activities based solely on their gender identity.
- If passed this bill will leave school districts on the hook for the costs of litigation and will compromise the well being of all students by funneling resources away from school needs.
- It would subject the trans students to invasive, traumatic and expensive medical testing and serve zero purpose.
- Trans students already live and play sports in New Hampshire and deserve to thrive like any other student.

Palana Belken – ACLU NH

- Two years ago, the state legislated non-discrimination protections for trans gender individuals and last year they extended those to public schools.
- To, one year later, add this to the statute flies in the face of all that has been done.
- She has been working with the Interscholastic Athletic Association and a number of trans students could not be at the hearing, so she submitted a packet with testimonies from them.

- One line from Lindsey Williams she shared, “strategy lessons taught me when others use scare tactics to foster division by sowing distrust of people they don’t understand.”
- A lot of the discussion around this bill she has been hearing seems to be that.
- She has blood work regularly and her levels of testosterone will be lower than a CIS gender woman because she is on an inhibitor that prevents any of it from being taken into her body.
- She believes if you were to start testing people things would not be as black and white, especially with chromosomal testing there would be abnormalities.
- Senator Kahn asked if she could provide the two policies, one from the Interscholastic Association and the School Board Association.
- Ms. Belken stated she would be happy to provide them.

Chris Erchill – Staff Attorney, GLAD

- They share the belief that athletics should be fair and inclusive for all women and girls in New Hampshire.
- This bill would undermine rather than promote those core values.
- This legislature has demonstrated leadership in understanding the lives of trans gendered people in ensuring that every trans gender citizen can participate in every aspect of society.
- They now understand from the consensus of medical experts, what is necessary for young trans gendered girls to experience healthy psycho-social development and educational success.
- A critical part of gender transition is living fully as female in her environment.
- It requires the child’s integration in society in a manner consistent with her gender identity.
- If this process is impeded, they know from the experts, that it is undermined and hinders a person’s healthy development.
- School athletic programs provide important skills needed for character development.
- Skills such as leadership, sportsmanship, self-discipline, teamwork and physical fitness.
- Trans gendered girls need this just as any girl would.
- Requiring a trans gendered girl to play on a boys sports team as a condition of participation in athletic programs, would undermine her transition and harm her healthy social education.
- Highlighted the story of Sarah Huckman who played sports all through high school.
- She loved sports but it meant something more to her and she is quoted as saying “if I did not have sports I would not be alive today.
- She credits her coaches for making her strong and courageous woman she is today.
- He clarified one point made earlier. There has not been a girl in NH that has not been able to play on a team because of a trans girl.
- The policy of the NHIAA was developed with community input and if this bill passes the legislature would be reaching in and undoing that policy.
- He believes this bill originates outside of NH and does not think they should succumb to this foreign divisive legislation.

Sophia Biondolillo

- She is opposed to this bill because it can be easily manipulated to cause harm and forces students to undergo an invasive and expensive process.
- The wording of the bill is vague and allows for any person to “dispute” a student’s birth gender.
- If a parent on the soccer team thinks that one girl is doing too well, she may be able to get her kicked off.
- The process that a student would have to go through by getting a hormone level test and a chromosome test as well as a physical examination is costly and violates the students privacy.
- She participates on a sports team and none of the boys have an advantage. They are not taking the place of biological girls.
- Senator Dietsch asked what team she plays on.
- Ms. Biondolillo replied that it is a roller derby team.
- Senator Kahn asked what school she plays for.
- Ms. Biondolillo stated that she goes to an online school.

Neutral Information Presented:

Shawn Locke

- He is from the NH Department of Justice is to provide information only.
- There are potential legal ramifications if this bill is passed.
- Last session the state took the position of protecting trans gender persons under the discrimination laws.
- This legislation will open the door to litigation for the state.
- The second point he would like to make is that this bill opens the door to only trans women and classifies people.
- The third point is that the bill as drafted will open the door for harassment of biological females or trans females on the team.
- The bill does not address to who the athlete needs to prove they are qualified to play on the female sports team.
- Senator Dietsch asked if there are trans gendered females allowed on the girls team but are not medically transitioning.
- Mr. Locke commented that currently a lot of the decisions are left up to the school and the parents and some documentation proving a transition is taking place. It is possible for a person who is transitioning to be allowed in different stages.
- Senator Dietsch asked unless there is a coach who is trying to stack the team would a person who is just stating that they feel female be allowed on a female team.
- Mr. Locke stated that the case would be reviewed but it would vary across school districts.
- Senator Dietsch would it be more appropriate to focus on the coaches and fairness.
- Mr. Locke responded that there is a huge ethical question with coaches that are trying to stack teams but that is not happening.

TJM

Date Hearing Report completed: March 9, 2020